

Department of Energy

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(3) The technical assistance or guidance pertains solely to the administrative requirements of the award.

(d) In cooperative agreements, DOE has the right to intervene in the conduct or performance of project activities for programmatic reasons. Intervention includes the interruption or modification of the conduct or performance of project activities. Suspension or termination of the cooperative agreement under §§ 600.162, 600.243 and 600.352 does not constitute intervention in the conduct or performance of project activities.

[61 FR 7166, Feb. 26, 1996, as amended at 74 FR 44275, Aug. 28, 2009]

§ 600.6 Eligibility.

(a) *General.* DOE shall solicit applications for financial assistance in a manner which provides for the maximum amount of competition feasible.

(b) *Restricted eligibility.* If DOE restricts eligibility, an explanation of why the restriction of eligibility is considered necessary shall be included in the funding opportunity announcement, program rule, or published notice.

(1) If the aggregate amount of DOE funds available for award under a funding opportunity announcement or published notice is \$1 million or more, unless authorized by statute or program rule, such restriction of eligibility shall be:

(i) Supported by a written determination initiated by the program office;

(ii) Concurred in by legal counsel and the Contracting Officer; and

(iii) Approved by an official no less than one level below the responsible program Assistant Secretary, Deputy Administrator, or other official of equivalent authority.

(2) Where the amount of DOE funds is less than \$1 million, the cognizant HCA and the Contracting Officer may approve the determination.

(c) *Noncompetitive financial assistance.* DOE may award a grant or cooperative agreement or technology investment agreement on a noncompetitive basis only if the application satisfies one or more of the follow selection criteria:.

(1) The activity to be funded is necessary to the satisfactory completion of, or is a continuation or renewal of,

an activity presently being funded by DOE or another Federal agency, and for which competition for support would have a significant adverse effect on continuity or completion of the activity.

(2) The activity is being or would be conducted by the applicant using its own resources or those donated or provided by third parties; however, DOE support of that activity would enhance the public benefits to be derived and DOE knows of no other entity which is conducting or is planning to conduct such an activity.

(3) The applicant is a unit of government and the activity to be supported is related to performance of a governmental function within the subject jurisdiction, thereby precluding DOE provision of support to another entity.

(4) The applicant has exclusive domestic capability to perform the activity successfully, based upon unique equipment, proprietary data, technical expertise, or other such unique qualifications.

(5) The award implements an agreement between the United States Government and a foreign government to fund a foreign applicant.

(6) Time constraints associated with a public health, safety, welfare or national security requirement preclude competition.

(7) The proposed project was submitted as an unsolicited proposal and represents a unique or innovative idea, method, or approach that would not be eligible for financial assistance under a recent, current, or planned funding opportunity announcement, and if, as determined by DOE, a competitive funding opportunity announcement would not be appropriate.

(8) The responsible program Assistant Secretary, Deputy Administrator, or other official of equivalent authority determines that a noncompetitive award is in the public interest. This authority may not be delegated.

(d) *Approval requirements.* (1) Where the amount of DOE funds is \$1 million or greater, determinations of noncompetitive awards shall be:

(i) Documented in writing;

(ii) Concurred in by the responsible program technical official and local legal counsel; and

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(iii) Approved, prior to award, by the responsible program Assistant Secretary, Deputy Administrator, or official of equivalent authority and the Contracting Officer. The approval authority may be delegated to one organizational level below the Assistant Secretary, Deputy Administrator, or official of equivalent authority.

(2) Where the amount of DOE funds is less than \$1 million, determinations of noncompetitive awards shall be:

- (i) Documented in writing;
- (ii) Concurred in by local legal counsel, unless for a particular award or class of awards of \$1 million or less, review is waived by legal counsel; and
- (iii) Approved by the cognizant HCA and the Contracting Officer.

[74 FR 44275, Aug. 28, 2009, as amended at 74 FR 48850, Sept. 25, 2009]

§ 600.7 Small and disadvantaged and women-owned business participation.

(a) DOE encourages the participation in financial assistance awards of small businesses, including those owned by socially and economically disadvantaged individuals and women, of historically black colleges, and of colleges and universities with substantial minority enrollments.

(b) For definitions of the terms in paragraph (a) of this section, see the Higher Education Act of 1965, and 15 U.S.C. 644, as amended by the Federal Acquisition Streamlining Act (FASA), and implementing regulations under FASA issued by the Office of Federal Procurement Policy.

(c) When entering into contracts under financial assistance awards, recipients and subrecipients shall comply with the requirements of §§ 600.144, 600.236 and 600.331, as applicable.

[61 FR 7166, Feb. 26, 1996, as amended at 74 FR 44276, Aug. 28, 2009]

§ 600.8 Funding Opportunity Announcement.

(a) *General.* Funding Opportunity Announcements (FOA) include any issuance used to announce funding opportunities that would result in the award of a discretionary grant, cooperative agreement, or technology investment agreement, whether it is called a program announcement, program no-

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tice, solicitation, broad agency announcement, research announcement, notice of program interest, or something else.

(1) A Program Assistant Secretary (or official of equivalent authority) may annually issue a program notice describing research areas in which financial assistance is being made available. Such notice shall also state whether the research areas covered by the notice are to be added to those listed in a previously issued program rule. If they are to be included, then applications received as a result of the notice may be treated as having been in response to that previously published program rule. If they are not to be included, then applications received in response to the notice are to be treated as unsolicited applications. FOAs may be issued by a DOE Contracting Officer or program office with prior concurrence of the contracting office.

(2) DOE must post synopses of its FOAs and modifications to the announcements at the Grants.gov Internet site, using the standard data elements/format, except for:

(i) Announcements of funding opportunities for awards less than \$25,000 for which 100 percent of eligible applicants live outside of the United States.

(ii) Single source announcements of funding opportunities which are specifically directed to a known recipient.

(b) *Subawards.* In accordance with the provisions of the applicable statute and program rules, if a DOE financial assistance program involves the award of financial assistance by a recipient to a subrecipient, the recipient shall provide sufficient advance notice so that potential subrecipients may prepare timely applications and secure prerequisite reviews and approvals.

(c) *Announcement format.* DOE must use the government-wide standard format to publish program announcements of funding opportunities.

[61 FR 7166, Feb. 26, 1996, as amended at 69 FR 7867, Feb. 20, 2004; 70 FR 69254, Nov. 15, 2005; 74 FR 44276, Aug. 28, 2009]